(23)

HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 143 of 2002

Munchu Ram Marar

Versus

State of Chhattisgarh

JUDGMENT

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

I agree

Sd/-
L.C.BHADOO
Judge

Post for Judgment: 29/10/2007

Sd/-
SUNIL KUMAR SINHA
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 143 of 2002

APPELLANT — Munchu Ram Marar, Aged about 26 years, Son of Ramcharan Patel, Resident of Village – Girvani, P.S. – Bilaigarh, District – Raipur (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, Through : P.S. – Bilaigarh, District – Raipur (C.G.)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri C.R. Sahu, counsel for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State/respondent.

(DIVISION BENCH)

HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

JUDGMENT
(29.10.2007)

Following judgment of the Court was delivered by **Sunil Kumar Sinha, J,**

(1) This appeal is directed against the judgment of conviction and order of sentence dated 29.1.2002 passed by the Second Additional Sessions Judge, Baloda Bazaar, District Raipur in Sessions Trial No. 148/2001, whereby, the said Court, after holding the appellant guilty of offence punishable u/s 302 of I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further under R.I. for 6 months.

(2) The deceased namely Munkuram was the real brother of appellant Munchuram. The allegations are that on the fateful day i.e. on 10.02.2001 at about 19.30 hours, when the deceased

returned from the market and was in front of his house, the appellant attacked him by a wooden plank (the plank used in the cot) causing many injuries to him. Looking to his injuries, he was taken to Bhatgaon hospital, where he was medically examined by Dr. Narayan Singh (PW-15), who prepared his report (Ex.-P/27A) and an information was given to P.S. Bilaigarh, which was reduced into *Rojnamch Sahana* No. 341/10/2/01 (Ex.-P/8). The police came to the hospital and *Dehati Nalishi* was recorded, based on which, the F.I.R. (Ex.-P/9) was recorded. The offence was registered u/s 307 I.P.C. Looking to the serious injuries sustained by the deceased, he was referred to Medical College Hospital, Raipur but the deceased succumbed to the injuries on 11.2.2001. An information was given to the police station Mohadhapara, on which, the Investigating Officer, after giving notice (Ex.-P/6) to the *Panchas* prepared inquest (Ex.-P/7) on the body of the deceased. The post-mortem on the body of the deceased was conducted by Dr. Ulhas Gonnade (PW-10), who noticed the following injuries on the body of the deceased :

i) one stiched lacerated wound size 3.5 cm. on the sagital plane 9 cm above right ear;

ii) on stiched lacerated wound on the right side of the head obliquely placed, 7 cm. above the occipital protuberance;

iii) right eyelid blackish due to deposition of blood;

iv) 5 abrasions of different size on the right elbow and nearby area;

v) one lacerated wound in between thumb and index finger of right hand in size of 1 cm. x 0.3 cm.;

vi) an abrasion on the upper portion of left scapula size 2 cm. x 0.5 cm with a contusion in the upper and lower muscle of scapula size 5 x 1 cm.;

vii) one abrasion on the back near the right shoulder size 0.3 cm. round;

viii) there was Y shaped linear fracture on the right side of skull, the fractured bones were depressed inside &

(ix) an abrasion above the left eyebrow size 0.5 cm round

According to his opinion, the death was due to shock and hemorrhage as a result on injuries to head. The death was homicidal in nature and the injuries were sufficient to cause death in ordinary circumstances. They were caused by hard, blunt and heavy object. He prepared his report Ex.-P/12.

(3) In further investigation, site plan was prepared under Ex.-P/5. Another site plan was prepared under Ex.P/4. Blood stained and plain soils were seized from the place of occurrence under Ex.-P/2. One stone was seized from the place of occurrence under Ex.-P/3. The wooden plank (size 3 ft. and 1 inch in length and 7 inches in breadth) having blood stains were seized on its production by Panchram Sahu under Ex.-P/1.

(4) After usual investigation, the charge-sheet was filed in the Court of Judicial Magistrate First Class, Baloda Bazaar, who in turn committed the case to the Court of Session Judge Raipur, from where it was received on transfer by the Second Additional Sessions Judge, Baloda Bazaar, who conduct the trial and convicted and sentenced the accused/appellant as aforementioned.

(5) Learned counsel for the appellant has not disputed the homicidal death of the deceased. Moreover, it comes in the evidence of PW-1, Sumita Bai (wife of the deceased) that on the fateful day, when her husband returned from market and was standing near the doors of the house, all of a sudden, her brother-in-law (*Dewar*) Munchuram, accused-appellant, attacked over her husband. She tried to intervene but she could not do so. Then, Panchram came there and snatched the club from the hands of the appellant. Her husband received many injuries on his head, blood started coming out from the injuries and he was taken to Bhatgaon. From Bhatgaon, he was taken to Raipur hospital, where, he died at about 4 'O' Clock in the

morning. Her husband was attacked on Saturday evening and he died on Sunday morning at about 4.00 am. PW-2, Panchram has also stated about the assault given by the appellant to his brother by a wooden plank, which is used in cot. The above evidence of these two witnesses is supported by the evidence of Dr. Narayan Singh (PW-15), who conducted the first medical examination of the deceased as also Dr. Ulhas Gonnade (PW-10), who conducted the post-mortem on the body of the deceased and noticed the above injuries. The autopsy surgeon has clearly opined that the death was due shock and hemorrhage as a result of head injuries. It was homicidal in nature and the injuries were sufficient to cause death in ordinary course of nature. Injuries were caused by hard and blunt object. Therefore, on the basis of above ocular and medical evidence, it is established that the death of the deceased was homicidal in nature.

(6) Learned counsel for the appellant has argued that both the eye witnesses namely Sumitra Bai (PW-1) and Panchram Sahu (PW-2) are not reliable witnesses. He argued that Sumitra Bai is the wife of the deceased, therefore, she is an interested witness and much reliance cannot be placed on her evidence. About Panchram Sahu (PW-2), he argued that he claims to see the incident from some distance, therefore, he should also be disbelieved. Alternatively, he argued that in the facts and circumstances of the case, the offence committed would not traveled beyond Section 304 (Part-II) I.P.C. and the conviction u/s 302 I.P.C. cannot be sustained.

(7) On the other hand, learned counsel for the State opposed these arguments and supported the judgment of conviction and order of sentence passed by the trial Court.

(8) We have heard the learned counsel for the parties at length and have also perused the records of the Sessions case.

(9) So far as first argument regarding credibility of PW-1, Sumitra Bai is concerned, her credibility cannot be doubted only on the ground that she is the wife of the deceased, it has been held by the Apex Court in many matters that the relationship is not a factor to affect the credibility of a witness. It is more often than not that the relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the Court has to adopt the careful approach and analyze the evidence to find out whether it is cogent and credible that is to say that their evidence has to be scrutinized with great care and circumspection. Please see ***AIR 2007 S.C. 1299 – Kalegura Padma Rao & another –vs- The State of A.P***.

(10) PW-1, Sumitra Bai has deposed that in the evening of the fateful day, her husband had gone to the market and after returning from the market, he was standing near the doors of the house. At that time, her *Dewar* Munchuram started beating him. She went to the place of occurrence and tried to stop the club blows, which were being given to her husband but she could not stop them. When she could not do so, then Panchram (PW-2) a shopkeeper, who was present there, had snatched the club. On her cries, many villagers gathered there. Munkuram, her husband, had received many injuries on his head. Blood was coming out from the injuries. He was taken to Bhatgaon. Her brother-in-law, who was in the house, had also reached to Bhatgaon later on. From Bhatgaon, Munku (her husband) was taken to Raipur hospital where he died at about 4 'O' Clock in the morning. The incident took place on Saturday evening and her husband had died on Sunday morning at about 4 'O' Clock.

(11) PW-2, Panchram Sahu has deposed that the deceased and the appellant both were brothers, he has grocery shop in the village, his shop is at a distance of 20 metres from their house. On the fateful day, he was present near the boring, at that time, wife of the deceased came there crying like 'save-save', on this,

he turned and saw that the accused/appellant Munchuram was beating his brother Munkuram by a wooden plank of cot. It was of about 2 fts. Seeing this, he reached to the place of occurrence and snatched the plank from the hands of accused-appellant. But, by that time, Munkuram had fell down. Accused wanted to assault Munkuram again and he had tried to assault him by a stone, which was lying there, which he had stopped. He had snatched the stone from the hands of the appellant, by that time many villagers gathered there. Thereafter Munkuram was taken to Bhatgaon hospital by a tractor. He produced the wooden plank to the police, which he had snatched from the accused-appellant, which was seized by the police vide Ex.-P/1, which bears his signature.

(12) Though lengthy cross-examinations have been done but the defence has not been able to elicit any material fact in the cross-examinations of these two witnesses, which may discredit their credibility or which may lead to the inference that these witnesses are unreliable witnesses. The defence has not been able to bring that either these witnesses were inimical to the accused or they were having a grudge against the accused or there was a reason with them to falsely implicate the accused-appellant in crime in question.

(13) After careful consideration of the entire evidence of these two witnesses, we do not find any reason to disbelieve their testimonies. Therefore, the complicity of the accused in crime in question is fully established on the evidence of these two witnesses.

(14) As far as argument that the offence does not travel beyond Section 304 (Part-II) I.P.C. is concerned, it would appear from the evidence of Dr. Ulhas Gonnade (PW-10) that along with many other injuries, the deceased had sustained fatal injuries on the head and there was a 'Y'-shaped linear fracture on the right side of skull and the fractured bones were depressed inside. The contents of the post-mortem report would show that

two arms of linear fracture were about 9 cms. in length and the 3rd arm was of about 5 cms., that means, a long linear depressed fracture in 'Y' shape was present there, which shows the intensity of assault made by the accused. This is about one injury, which, in fact, proved fatal but there were other injuries also on the body of the deceased, which would show that in fact, the repeated blows were given to the deceased on his vital parts like head and chest. The blows were given by a wooden plank of about 3 feet in length having 7 inches breadth. Certainly, it was hard, blunt and heavy object, which was used by the accused. It is not the case that on some altercation or in some quarrel in heat of anger, the accused assaulted the deceased. It comes in the evidence that as soon as the deceased reached to his house, the accused, all of a sudden, appeared there and he attacked over the head of the deceased by the said wooden plank giving repeated blows and even he tried to attack by stone when the deceased fell down and the plank was snatched by PW-2, Panchram Sahu. Therefore, looking to the nature of the weapon used, nature of the injuries sustained by the deceased, the place of body chosen by the accused and intensity by which the blow was given to the deceased and the result thereof, it cannot be said that the act of the deceased would not travel beyond Section 304 (Part-II) I.P.C. Therefore, the argument advanced by the learned counsel for the appellant that in the facts and circumstances of the case, the offence would not travel beyond Section 304 (Part-II) I.P.C. cannot be sustained. We do not find any force in the above arguments.

(15) In the result, we do not find any substance in this appeal. The appeal is devoid of merit, the same is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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